

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 8, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3354

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

WILLIAM J. EVERS,

PLAINTIFF-APPELLANT,

v.

DENNIS C. LUEBKE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Outagamie County:
WILLIAM C. GRIESBACH, Judge. *Affirmed.*

CANE, P.J. William Evers appeals a trial court order that dismissed his small claims lawsuit against Judge Dennis Luebke. Evers' lawsuit sought \$1,000 damages under § 782.09, STATS., for Judge Luebke's failure to respond to Evers' petition for a writ of habeas corpus. The trial court dismissed the suit on the ground that Evers had not met the notice of claim requirements of § 893.82, STATS., applicable to civil suits against state employees. Evers challenges this holding on appeal. In response, Judge Luebke argues that the trial court correctly

decided the notice of claim issue and that Evers' failure to verify his habeas corpus petition absolves Judge Luebke of any liability under § 782.09, STATS. This court agrees with Judge Luebke's second argument. On that basis, this court affirms the trial court order dismissing Evers' lawsuit.

Evers' habeas corpus petition did not meet the verification requirements of § 782.04, STATS. If it did not meet those requirements, Judge Luebke has no liability for refusing to issue the writ. *See Maier v. Byrnes*, 121 Wis. 258, 262-63, 358 N.W.2d 833, 836 (Ct. App. 1984). Although the notary to Evers' petition indicated that Evers' petition was "verified and sworn to before me," the notary's statement did not satisfy the verification requirements for pleadings. Historically, verification of pleadings requires more than the word "verified" uttered in the notary's jurat. A verification is a written averment by a litigant himself to the truth of the pleading's contents, not an oral statement by the litigant to the notary. *See* BLACK'S LAW DICTIONARY 1732 (rev. 4th ed. 1968); *see also State ex rel. Dudek v. Circuit Court*, 34 Wis.2d 559, 571-72, 150 N.W.2d 387, 394 (1967); *Nielsen v. Waukesha County Bd. Of Supervisors*, 178 Wis.2d 498, 512, 504 N.W.2d 621, 626 (Ct. App. 1993); 2 CALLAGHAN'S WISCONSIN PLEADING AND PRACTICE §§ 19.48.40 through 19.48.70, at 454-55 (4th ed. 1996); 1 NICHOLS CYC. FED. PROC. FORMS § 1.35, at 26 (1995); 2 NICHOLS § 38.27, at 412-13. Inasmuch as Evers did not meet the verification requirements for habeas corpus petition, Judge Luebke is not liable, and this court need not address the other issues Judge Luebke raises on appeal.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

